

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ECHOTA WOLFCLAN,

Plaintiff,

v.

JILMA MENESSES, *et al.*,

Defendants.

Case No. C23-5938-JLR-MLP

ORDER RE: PLAINTIFF'S MOTIONS  
TO AMEND COMPLAINT AND TO  
CONTINUE DEFENDANTS'  
SUMMARY JUDGMENT MOTION

**I. INTRODUCTION**

This is a civil rights action proceeding under 42 U.S.C. § 1983. This matter comes before the Court at the present time on Plaintiff's motions for leave to amend his complaint and to continue Defendants' pending summary judgment motion. (Dkt. ## 42, 44.) Defendants have filed responses opposing both motions (dkt. ## 45, 46), and Plaintiff has filed reply briefs in support of both motions (dkt. ## 48, 49). The Court, having reviewed Plaintiff's motions, all briefing of the parties, and the balance of the record, DENIES Plaintiff's motion for leave to amend (dkt. # 42), GRANTS Plaintiff's motion for a continuance (dkt. # 44), and establishes a deadline for Plaintiff to file a renewed motion for leave to amend.

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COMPLAINT AND TO CONTINUE DEFENDANTS'  
SUMMARY JUDGMENT MOTION - 1

## II. BACKGROUND

On October 19, 2023, Plaintiff Echota Wolfclan submitted to this Court for filing a *pro se* prisoner civil rights complaint and an application to proceed with this action *in forma pauperis* (“IFP”). (*See* dkt. # 1.) Plaintiff was confined at the Pierce County Jail at the time he filed his complaint, but shortly thereafter he was transferred into the custody of the Washington Department of Corrections. (*See* dkt. ## 1, 5.) On November 29, 2023, while the Court was waiting for Plaintiff to correct a deficiency in his IFP application, Plaintiff submitted to the Court for filing a proposed motion for summary judgment (dkt. # 7) and a proposed motion to add defendants (dkt. # 8).

On December 7, 2023, Plaintiff corrected his IFP deficiency (*see* dkt. # 9) and the following day this Court issued an Order directing service of Plaintiff’s complaint on the four Defendants named therein (dkt. # 14). The Court also directed that Plaintiff’s proposed motion for summary judgment be stricken as premature and advised that Plaintiff could re-file his motion after Defendants appeared and the parties had had an opportunity to conduct any necessary discovery. (*Id.* at 2 n.1.) In addition, the Court denied Plaintiff’s proposed motion to add defendants, noting that the motion was procedurally deficient and that the appropriate mechanism to add defendants was to file an amended pleading. (*Id.*)

On December 28, 2023, Plaintiff filed an amended complaint, and the Court ordered service of the amended pleading on two additional Defendants on January 3, 2024. (Dkt. ## 16, 22.) On January 24, 2024, Plaintiff re-filed his summary judgment motion. (Dkt. # 27.) At that point, counsel had appeared on behalf of all Defendants (*see* dkt. ## 17, 24), but no responsive pleading had been filed nor had the parties had any opportunity to conduct discovery. On February 12, 2024, Defendants filed a response to Plaintiff’s motion for summary judgment

1 together with a cross-motion for summary judgment. (Dkt. # 28.) The Court issued a Minute  
 2 Order the following day noting both motions for consideration on March 8, 2024, so that they  
 3 could be considered together. (Dkt. # 38.)

4 On February 26, 2024, counsel appeared on behalf of Plaintiff.<sup>1</sup> (Dkt. ## 39, 40.)  
 5 Plaintiff's counsel communicated with Defendants' counsel the same day seeking a stipulation to  
 6 remove the pending cross-motions for summary judgment from the Court's calendar and to  
 7 provide a date for Plaintiff's counsel to amend the complaint. (Dkt. # 43, ¶ 7, Ex. A.)  
 8 Defendants' counsel declined to stipulate on the grounds that some named Defendants are  
 9 entitled to absolute immunity and the remaining Defendants are high ranking officials and, thus,  
 10 are not proper defendants in this action. (*See id.*) On February 29, 2024, Plaintiff's counsel  
 11 withdrew Plaintiff's pending summary judgment motion and filed motions to amend Plaintiff's  
 12 complaint and to continue Defendants' summary judgment motion. (Dkt. ## 41, 42, 44.)  
 13 Defendants oppose both motions. (Dkt. ## 46, 47.) The Court addresses each of Plaintiff's  
 14 pending motions below.

### 15 III. DISCUSSION

#### 16 A. Motion for Leave to Amend

17 Plaintiff seeks leave to amend his complaint in light of the recent appearance of pro bono  
 18 counsel, and he asks that an order be entered allowing him to amend his complaint on or before  
 19 May 8, 2024. (Dkt. # 42.) Plaintiff's attorneys assert that the additional time will allow them to  
 20 investigate Plaintiff's allegations and, if appropriate, to comply with the statutory prerequisite for  
 21 filing a state law tort claim. (*Id.*) Defendants argue that the motion to amend should be denied

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22  
 23 <sup>1</sup> Plaintiff's counsel were recently appointed to serve as pro bono counsel for Plaintiff in a related case, *Wolfclan v. Washington DSHS, et al.*, No. C23-5399-TSZ-SKV.

1 because: (1) Plaintiff failed to comply with Local Civil Rule (“LCR”) 15 by not attaching a  
2 proposed amended complaint to his motion; (2) Plaintiff’s request for approximately 75 days to  
3 file an amended complaint is not permissible under LCR 15 and is not appropriate given that  
4 counsel’s representation was undisclosed prior to filing a notice of appearance; and (3)  
5 amendment would be futile and prejudicial because Plaintiff’s lawsuit suffers from incurable  
6 defects. (Dkt. # 46.)

7 Defendants are correct that Plaintiff failed to comply with LCR 15 because he failed to  
8 attach a proposed amended complaint to his motion for leave to amend as is required by the local  
9 rule. Plaintiff’s motion is therefore procedurally deficient and must be denied on this basis.  
10 However, given that pro bono counsel only recently appeared on behalf of Plaintiff in this case,  
11 the Court deems it reasonable and appropriate to afford counsel time to conduct some  
12 investigation into this matter, prepare an amended pleading should counsel deem it appropriate to  
13 do so, and again seek leave to amend in accordance with the provisions of LCR 15.

14 Once a procedurally proper motion to amend is presented for consideration, the Court  
15 will take up the issue of whether leave to amend should be granted. Defendants may at that time  
16 renew any arguments in opposition to the proposed amendment they deem appropriate. The  
17 Court will establish a deadline for the filing of a renewed motion for leave to amend below.

#### 18 **B. Motion to Continue**

19 Plaintiff also seeks to continue Defendants’ motion for summary judgment pursuant to  
20 Fed. R. Civ. P. 56(d) in order to give pro bono counsel an opportunity to investigate, obtain  
21 declarations, conduct discovery related to Plaintiff’s claims and, if appropriate, amend Plaintiff’s  
22 current complaint. (Dkt. # 44.) Defendants argue that Plaintiff’s motion to continue should be  
23 denied because: (1) Plaintiff failed to identify the specific facts further discovery would reveal

1 and explain why those facts would preclude summary judgment; (2) Plaintiff's request for an  
2 indefinite continuance is unreasonable and inappropriate given that counsel's representation was  
3 undisclosed prior to filing a notice of appearance; and (3) a continuance would be futile and  
4 unduly prejudicial because Plaintiff's lawsuit suffers from incurable defects. (Dkt. # 45.)

5 As discussed above, this Court deems it reasonable and appropriate to permit Plaintiff's  
6 pro bono counsel an opportunity to investigate Plaintiff's claims and prepare an amended  
7 pleading for the Court's consideration. This necessarily requires that Defendants' pending  
8 motion for summary judgment be delayed for a period of time. Though Defendants object to any  
9 delay, the circumstances presented here are unique.

10 Plaintiff, while proceeding *pro se*, unadvisedly filed a motion for summary judgment  
11 almost immediately after counsel appeared on behalf of Defendants. (*See* dkt. ## 17, 24, 27.)  
12 Plaintiff did so after apparently incorrectly advising Defendants' counsel that he was represented  
13 by attorney Mark Walters. (*See* dkt. # 47, ¶ 2.) After Plaintiff conveyed this information to  
14 Defendants' counsel, counsel reached out to Mr. Walters and learned that Mr. Walters' firm was  
15 looking at this case but had not finalized terms for representation of Plaintiff in this matter. (*Id.*,  
16 ¶ 3.) This first communication by Mr. Walters regarding the status of his representation of  
17 Plaintiff occurred on January 26, 2024. (*Id.*) It was not until February 26, 2024, that Mr. Walters  
18 contacted Defendants' counsel again and filed a notice of appearance in this action. (*See id.*,  
19 ¶¶ 3-5; dkt. # 39.) In the interim, Defendants elected to not only respond to Plaintiff's arguably  
20 premature summary judgment motion, but to also file a summary judgment motion of their own.  
21 (Dkt. # 28.)

22 While the Court acknowledges that Defendants have invested some amount of time in the  
23 preparation of their dispositive motion, the fact remains that this lawsuit is still in the very early

1 stages with no pretrial schedule yet established—including no deadline to amend pleadings—and  
2 no discovery having been undertaken. Thus, though the delay may be inconvenient for  
3 Defendants, the Court does not deem it to be unduly prejudicial. Defendants’ desire for a speedy  
4 resolution of this matter does not outweigh the importance of giving pro bono counsel an  
5 opportunity to investigate Plaintiff’s claims and perfect them if possible.

#### 6 IV. CONCLUSION

7 Based on the foregoing, the Court ORDERS as follows:

8 (1) Plaintiff’s motion for leave to amend his complaint (dkt. # 42) is DENIED. This  
9 denial is without prejudice to Plaintiff filing a renewed motion to amend, together with a  
10 proposed amended pleading, not later than *May 8, 2024*.

11 (2) Plaintiff’s motion to continue Defendants’ motion for summary judgment (dkt.  
12 # 44) is GRANTED. Because Defendants’ motion for summary judgment (dkt. # 28) cannot  
13 reasonably be considered prior to resolution of Plaintiff’s anticipated renewed motion for leave  
14 to amend, that motion is STRICKEN from the Court’s motion calendar subject to re-noting once  
15 any motion to amend is resolved. If no renewed motion for leave to amend is filed by the date set  
16 forth above, the Court will immediately place Defendants’ motion back on the calendar and call  
17 for a response.

18 (3) The Clerk is directed to send copies of this Order to all counsel of record and to  
19 the Honorable James L. Robart.

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1 DATED this 8th day of April, 2024.

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4 MICHELLE L. PETERSON  
5 United States Magistrate Judge  
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